

Montana Fish, Wildlife and Parks

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(406) 444-2452

ENVIRONMENTAL ASSESSMENT CHECKLIST

Fur Farm, Game Bird Farm, Zoo/Menagerie, Shooting Preserve

PART 1. PROPOSED ACTION DESCRIPTION

Project Title: Freeman Roadside Menagerie Permit

Application Date: September 27, 2007

Name, Address and Phone Number: Corynne A. Freeman, 76 W. Parrot Creek, Roundup, MT 59072. Telephone # (406) 323-3291

Project Location: That part of Section 24, Township 8N, Range 26E, described as Tract 2, of certificate of Survey No. 1993-16 on file in the office of the Clerk and Recorder of Musselshell County under Document #237196, Excepting that part located in SE1/4NE1/4 and Township 8N Range 26E, Section 24 NW1/4SE1/4 and N1/2NE1/4 SW1/4.

Description of Project: Roadside menageries are regulated through the provisions set forth in 87-4-801 et al, MCA, the Administrative Rules of Montana and license stipulations, if any, established through the permitting process. Roadside menageries allow the possession of some animals that are normally restricted in the state of Montana and also allow for using animals for exhibition or attracting trade.

On October 01, 2007 Montana Fish, Wildlife & Parks (FWP) Region 5 received an application for a roadside menagerie permit for one anteater (*Tamandua spp*) and one short-tailed possum (*Monodelphis domestica*). The applicant proposes building a 4 ft by 8 ft indoor enclosure inside of a 24 ft by 36 ft steel building for the anteater. During the summer, the anteater would be allowed access to an outside 10 ft by 10 ft chain link cage. The possum would be kept inside of a 30-gallon glass aquarium with a steel mesh fitted top. The applicant also plans to show the animals at schools in the surrounding area. The application was reviewed and determined to be complete in early October, 2007 by FWP. In accordance with the Montana Environmental Policy Act, FWP is required to prepare an Environmental Assessment (EA).

The EA considers the impacts to the physical and human environments if a roadside menagerie permit is granted. Three alternatives were considered: 1) Do not issue the permit (no action); 2) issue the permit; and, 3) issue the permit with stipulations to mitigate identified impacts. If a permit is issued FWP has further responsibility to inspect and approve cages and facilities for size, strength and general animal welfare (ARM 12.6.1532).

Other groups or agencies contacted or which may have overlapping jurisdiction:
The USDA has already issued a Class C Exhibitor permit to Ms. Freeman. FWP checked by telephone on 11/06/07 with the Musselshell County Attorney, Ken Sipe, to see if Musselshell County had any restrictions on these animals. It appears that Musselshell County has no restrictions.

PART 2. ENVIRONMENTAL REVIEW

Table 1. Potential impact on physical environment.

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Below Or On Attached Pages
1. Unique, endangered, fragile, or limited environmental resources				X		
2. Terrestrial or aquatic life and/or habitats				X		
3. Introduction of new species into an area			X		X	1.1
4. Vegetation cover, quantity & quality				X		
5. Water quality, quantity & distribution (surface or groundwater)				X		
6. Existing water right or reservation				X		
7. Geology & soil quality, stability & moisture				X		
8. Air quality or objectionable odors				X		
9. Historical & archaeological sites				X		
10. Demands on environmental resources of land, water, air & energy				X		
11. Aesthetics				X		

Comments

(A description of potentially significant, or unknown, impacts and potential alternatives for mitigation must be provided.)

1.1 Short-tailed possums and anteaters are prohibited species for private possession in Montana and there are concerns that if they escaped they may survive and breed in Montana. This potential has been mitigated since the applicant has requested possession of only one animal of each species. If additional animals are obtained they must be of same sex. In addition, the facilities as designed are sufficient to hold the animals and prevent escape.

Table 2. Potential impacts on human environment .

Will the proposed action result in potential impacts to:	Unknown	Potentially Significant	Minor	None	Can Be Mitigated	Comments Below Or On Attached Pages
1. Social structures and cultural diversity				X		
2. Changes in existing public benefits provided by wildlife populations and/or habitat				X		
3. Local and state tax base and tax revenue				X		
4. Agricultural production				X		
5. Human health				X		
6. Quantity & distribution of community & personal income				X		
7. Access to & quality of recreational activities				X		
8. Locally adopted environmental plans & goals (ordinances)				X		
9. Distribution & density of population and housing				X		
10. Demands for government services			X		X	2.1
11. Industrial and/or commercial activity				X		

Comments

(A description of potentially significant, or unknown, impacts and potential alternatives for mitigation must be provided as comments.)

- 2.1 FWP has the responsibility under 87-4-801 et al, MCA, to provide and review applications for roadside menageries. The process involves both the Wildlife and Enforcement Divisions of FWP. Licensees have the responsibility for cage construction, animal welfare and record keeping. In the event the facility is not being run in accordance with the applicable statutes FWP can impose stipulations, fines, confiscate animals and revoke permits without right of renewal.

Based on the significance criteria evaluated in this EA, is an EIS required (YES/NO)? If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action.

No – There are no potentially significant impacts identified in this EA.

Does the proposed action involve potential risks or adverse effects, which are uncertain but extremely harmful if they were to occur?

Potential, although unlikely risk of a short tailed possum surviving if it were to escape. Because there will not be a breeding pair and because appropriate enclosures will be inspected prior to licensure, the possibility of escape and breeding is below the level of significance.

Does the proposed action have impacts that are individually minor, but cumulatively significant or potentially significant?

No.

Description and analysis of reasonable alternatives (including the no action alternative) to the proposed action when alternatives are reasonably available and prudent to consider. Include a discussion of how the alternatives would be implemented:

Alternative 1: No Action. Under this alternative, a roadside menagerie license would not be issued. This alternative would only be adopted if the menagerie were prohibited by local ordinance; the applicant was unfit due to past violations pertaining to animal welfare or other applicable statutes; or, the EA or public comment identified significant impacts to the human or physical environments that could not be mitigated.

Alternative 2: Issue the license. Under this alternative, the roadside menagerie license would be issued pending inspection and approval of the cages. The identified impacts to the human and physical environments were all judged to be minor and easily mitigated through routine sanitation, sound food storage and sound cage design and construction.

Alternative 3: Issue the license with stipulations. (Preferred Alternative). Under this alternative the roadside menagerie license would be issued with stipulations to mitigate identified impacts.

List suggested conditions attached to this license:

1. If the applicant adds animals of the same species to the menagerie, FWP would require confirmation that new animals were of the same sex as those of the same species already in the menagerie. *(addition of animals of the same species for breeding purposes would require a supplemental evaluation)*
2. FWP has the right and responsibility under 87-4-806 MCA to conduct periodic inspections of menageries. Other state and local ordinances regarding animal welfare may also apply.

3. If the animals are exhibited offsite, FWP must ensure that the animals are transported to and from the exhibition locations in a suitable cage. Exhibition offsite will require authorization from FWP and the applicant will be required to sign an indemnity agreement indemnifying FWP should any property damage or personal injury take place. *(this is consistent with the FWP policy regarding offsite exhibition of roadside menagerie animals –copy attached)*
4. No public contact will be allowed with the animals covered under the menagerie permit. *(this is consistent with the FWP policy regarding offsite exhibition of roadside menagerie animals –copy attached)*

Individuals or groups contributing to, or commenting on, this EA:

Letters and copies of the EA were sent to:

Edward L. Pelan	David MacIntyre
3 Gage Road	P.O. 722
Roundup 59072	Roundup 59072
Jim McGweyn	Edwin Weekes
P.O. 122	119 W. Parrot Creek Rd
Roundup 59072	Roundup 59072
William Steele	
513 N 4th Ave	
Bozeman, MT 59715	

The EA was posted on the FWP website and made available for comment on November 20, 2007. In addition, a legal advertisement was posted in the local Roundup, MT newspaper soliciting public comment.

Comments due by: December 7, 2007

EA prepared by: Jay Newell

Date Completed: 11/06/07

Email address for comments: jnewell@midrivers.com

Mail comments to: **MT Fish, Wildlife & Parks**

Attn: Jay Newell
1425 2nd St. W.
Roundup, MT 59072
406-323-3170

PART 3. DECISION

Recommendation and justification concerning preparation of EIS: There were no significant impacts identified in this EA that would indicate the need for an EIS.

Describe public involvement, if any: Public comments were solicited by placing the EA on the FWP website at fwp.mt.gov, by sending copies of the EA to neighboring landowners, and by placing a legal advertisement in the Roundup newspaper soliciting public comment.

Recommendation for license approval: _____
Wildlife Manager Date

Warden Captain Date

APPENDIX A

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

The 54th Legislature enacted the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The intent of the legislation is to establish an orderly and consistent process by which state agencies evaluate their proposed actions under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency actions pertaining to land or water management or to some other environmental matter that, if adopted and enforced without compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agency to assess the impact of a proposed agency action on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency action has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act. For the purposes of this EA, the questions on the following checklist refer to the following conditions:

1. If the applicant adds animals of the same species to the menagerie, FWP would require confirmation that new animals were of the same sex as those of the same species already in the menagerie. *(addition of animals of the same species for breeding purposes would require a supplemental evaluation)*
2. FWP has the right and responsibility under 87-4-806 MCA to conduct periodic inspections of menageries. Other state and local ordinances regarding animal welfare may also apply.
3. If the animals are exhibited offsite, FWP must ensure that the animals are transported to and from the exhibition locations in a suitable cage. Exhibition offsite will require authorization from FWP and the applicant will be required to sign an indemnity agreement indemnifying FWP should any property damage or personal injury take place. *(this is consistent with the FWP policy regarding offsite exhibition of roadside menagerie animals –copy attached)*
4. No public contact will be allowed with the animals covered under the menagerie permit without authorization by FWP. *(this is consistent with the FWP policy regarding offsite exhibition of roadside menagerie animals – copy attached)*

PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?

YES	NO	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	2. Does the action result in either a permanent or indefinite physical occupation of private property?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	3. Does the action deprive the owner of all economically viable uses of the property?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	4. Does the action deny a fundamental attribute of ownership?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO , skip questions 5a and 5b and continue with question 6.]
<input type="checkbox"/>	<input type="checkbox"/>	5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
<input type="checkbox"/>	<input type="checkbox"/>	5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	6. Does the action have a severe impact on the value of the property?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is NO , do not answer questions 7a-7c.]
<input type="checkbox"/>	<input type="checkbox"/>	7a. Is the impact of government action direct, peculiar, and significant?
<input type="checkbox"/>	<input type="checkbox"/>	7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?
<input type="checkbox"/>	<input type="checkbox"/>	7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with § 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.

Department of Fish, Wildlife & Parks
Exhibition Requirements for Roadside Menageries

- Requests for permission to take captive wildlife to shows, fairs, etc. must be received at least 10 working days (state working days) prior to the first date of departure. Failure to do so may result in denial of permission. This will allow the persons involved to prepare for the special circumstances involved with exhibitions.
- A request for exhibition must include a list of the animals to be exhibited; dates, times, and location of exhibition; a description of the enclosures or restraint to be used for exhibited animals; a listing of the personnel who will be involved with the exhibition; the licensee taking responsibility for the exhibition.
- An indemnity agreement is required for public exhibition of captive wildlife specifying the animals to be exhibited, dates of exhibition, and conditions under which the exhibition will be authorized. FWP will prepare the indemnity agreement indemnifying FWP. The licensee responsible for the exhibition must agree by signature to the conditions of the exhibition.
- If multiple exhibition sites are requested, complete information concerning dates, personnel involved, and animals exhibited must be submitted with the initial request.
- The applicant shall provide a current certificate of insurance to include personal injury and property damage coverage with combined single limits of a minimum of \$1,000,000, aggregate per year, from an insurer with a Best's rating of A- or better. FWP must be made additional insureds on the certificate. The certificate must be filed with FWP.
- The applicant taking primary responsibility for the exhibition must be a licensed roadside menagerie or wild animal menagerie operator who is in compliance with current FWP regulations for their licensed facility.
- Captive wildlife must be exhibited within enclosures capable of preventing escape of the animals. If animals are to be taken out of the enclosures for exhibition, a barricade providing a 20 foot separation from any member of the public must be employed. Only animals which are on a chain or leash and for which the trainer can demonstrate direct physical restraint may be exhibited outside of the enclosure.
- A barricade (rope or wire) will surround the primary enclosure or exhibition area to prevent direct public contact with the animals. Signs will be posted indicating that public contact is not allowed.
- A representative of the licensee must be present at all times that the animals are being exhibited. If animals are left in the enclosures overnight, security must be provided by the applicant. The responsible individual (signature on the indemnity agreement) must provide the names of the individuals assisting in overseeing the animals during exhibition.
- FWP may require additional stipulations as specific or changing circumstances regarding exhibition captive wildlife outside of licensed facilities occur.